

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Arthur M. Krieg  
Serial No.: 09/337,584  
Confirmation No.: 9169  
Filed: June 21, 1999  
For: IMMUNOSTIMULATORY NUCLEIC ACID MOLECULES  
Examiner: N. M. Minnifield  
Art Unit: 1645

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: December 6, 2010

Electronic Signature for Sharon R. Lloyd: /Sharon R. Lloyd/

MAIL STOP Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. 1.181**

Dear Sir:

In accordance with 37 CFR § 1.701, Applicant requests reconsideration of the Patent Term Extension (“PTE”) for U.S. Application No. 09/337,584 (“the ’584 Application”). Applicant provides, below, a statement of the facts involved, specifying the correct PTE and the basis under 37 CFR §1.701 for the adjustment, the relevant dates for which adjustment is sought, and the PTE to which the patent is entitled.

1. On September 9, 2010, the U.S. Patent and Trademark Office (“USPTO”) mailed a Notice of Allowance and Determination of Patent Term Extension (Exhibit 1) for the ’584 Application, which indicated that the ’584 Application was entitled to a patent term extension of 1 day.

2. According to the Patent Term Extension page (Exhibit 2) on the Patent Application Information Retrieval (PAIR) system, the USPTO accorded the '584 Application a patent term adjustment of 1 day for delay that occurred at the USPTO as a result of an Interference.

3. Applicant submits that the correct PTE should be 877 days, which is the non-overlapping delay due to the combined total of 2 Interferences.

4. 37 CFR 1.701 provides the basis for extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000). 37 CFR 1.701 (a) states that a "patent, other than for designs, issued on an application filed on or after June 8, 1995, is entitled to extension of the patent term if the issuance of the patent was delayed due to: (1) Interference proceedings under 35 U.S.C. 135 (a)." Under 37 CFR 1.701 (b) "the term of a patent entitled to extension under paragraph (a) of this section shall be extended for the sum of the periods of delay calculated under paragraphs (c)(1), (c)(2), (c)(3) and (d) of this section, to the extent that these periods are not overlapping, up to a maximum of five years." 37 CFR 1.701 (c) states that the "period of delay under paragraph (a)(1) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping: (i) With respect to each interference in which the application was involved, the number of days, if any, in the period beginning on the date the interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and (ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference proceedings under 35 USC 135(a) not involving the application and ending on the date of the termination of the suspension."

5. On January 8, 2007 Interference number 105526 was declared (Exhibit 3).

6. On December 1, 2008 a Judgment on motions in Interference number 105526 in favor of Applicant was entered (Exhibit 4).

7. On June 3, 2009 an appeal to CAFC for Interference number 105526 was dismissed, effectively ending Interference number 105526, in favor of Applicant (Exhibit 5).

8. On December 1, 2008 Interference number 105674 was declared (Exhibit 6).

9. On May 15, 2009 Junior Party Raz filed an Abandonment of Contest, effectively ending Interference number 105674, in favor of Applicant (Exhibit 7).

10. The time period of delay arising from Interference 105526 is 877 days.

11. The time period of delay arising from Interference 105674 completely overlaps with the time period of delay of Interference 105526 and is thus not applied toward the total calculation of PTE.

12. Based on the foregoing, Applicant respectfully submits that the correct Patent Term Extension should be 877 days as opposed to the 1 day PTA listed in the Notice of Allowance. The additional 876 days of Patent Term Extension resulted from delay arising from Interference 105526.

If a fee is due the Director is hereby authorized to charge the fee to our Deposit Account No. 23/2825, under Docket No. C1039.70020US00.

Dated: December 6, 2010

Respectfully submitted,

Docket No. C1039.70020US00

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